

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARTIN MCCURTIS,

Plaintiff,

No. 2:13-cv-15265

v

HON. DENISE PAGE HOOD

JONATHAN HENRY, MARK
BESSNER, RONALD COURTLEY,
BENJAMIN GARRISON, JOHN
DOES, in their individual capacities,
jointly and severally,

Defendants.

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**DEFENDANTS HENRY, BESSNER, COURTLEY, AND
GARRISON'S ANSWER TO COMPLAINT, NOTICE OF
AFFIRMATIVE DEFENSES, AND RELIANCE UPON
PLAINTIFF'S JURY DEMAND**

Defendants Jonathan Henry, Mark Bessner, Ronald Courtley, and Benjamin Garrison, by counsel, state the following for their Answer to Plaintiff's Complaint:

JURISDICTION AND VENUE

1. The allegation contains statements of law, and not fact, for which no answer is necessary.

2. Defendants do not contest the allegations of paragraph 2.

3. Defendants do not contest the allegations of paragraph 3.

4. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

PLAINTIFF AND DEFENDANTS

5. Defendants adopt by reference their responses to paragraphs 1 through 4.

6. The allegation is neither admitted nor denied for the reason that the Defendants lack knowledge or information sufficient to form a belief as to its truth, and Plaintiff is left to his proofs.

7. Admitted.

8. The allegation is neither admitted nor denied for the reason that the Defendants lack knowledge or information sufficient to form a belief as to its truth, and Plaintiff is left to his proofs.

9. Admitted.

10. The allegation contains statements of law, and not fact, for which no answer is necessary.

GENERAL ALLEGATIONS

11. Defendants adopt by reference their responses to paragraphs 1 through 10.

12. The allegation is neither admitted nor denied for the reason that the Defendants lack knowledge or information sufficient to form a belief as to its truth, and Plaintiff is left to his proofs.

13. The allegation is neither admitted nor denied for the reason that the Defendants lack knowledge or information sufficient to form a belief as to its truth, and Plaintiff is left to his proofs.

14. The allegation is neither admitted nor denied for the reason that the Defendants lack knowledge or information sufficient to form a belief as to its truth, and Plaintiff is left to his proofs.

15. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

16. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

17. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

18. Denied as untrue.

19. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an

accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

20. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

21. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

22. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

23. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is

denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

24. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

25. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

26. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

27. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

28. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

COUNT I
42 U.S.C. § 1983 – Excessive Force

29. Defendants adopt by reference their responses to paragraphs 1 through 28.

30. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

31. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

WHEREFORE, Defendants Jonathan Henry, Mark Bessner, Ronald Courtley, and Benjamin Garrison respectfully request that this Honorable Court dismiss Plaintiff's Complaint with prejudice, along with an award of costs associated with the defense of this matter, and any other relief this Court deems appropriate.

COUNT II
42 U.S.C. § 1983 – Unreasonable Seizure/False Arrest

32. Defendants adopt by reference their responses to paragraphs 1 through 31.

33. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

34. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

35. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

WHEREFORE, Defendants Jonathan Henry, Mark Bessner, Ronald Courtley, and Benjamin Garrison respectfully request that this Honorable Court dismiss Plaintiff's Complaint with prejudice, along with an award of costs associated with the defense of this matter, and any other relief this Court deems appropriate.

COUNT III
42 U.S.C. § 1983 –False Imprisonment

36. Defendants adopt by reference their responses to paragraphs 1 through 35.

37. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

38. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

WHEREFORE, Defendants Jonathan Henry, Mark Bessner, Ronald Courtley, and Benjamin Garrison respectfully request that this Honorable Court dismiss Plaintiff's Complaint with prejudice, along with an award of costs associated with the defense of this matter, and any other relief this Court deems appropriate.

COUNT IV
42 U.S.C. § 1983 –Conspiracy

39. Defendants adopt by reference their responses to paragraphs 1 through 38.

40. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

41. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

WHEREFORE, Defendants Jonathan Henry, Mark Bessner, Ronald Courtley, and Benjamin Garrison respectfully request that this Honorable Court dismiss Plaintiff's Complaint with prejudice, along with an award of costs associated with the defense of this matter, and any other relief this Court deems appropriate.

STATE LAW CLAIMS

COUNT V Assault and Battery

42. Defendants adopt by reference their responses to paragraphs 1 through 41.

43. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

44. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

45. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

46. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an

accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

47. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

WHEREFORE, Defendants Jonathan Henry, Mark Bessner, Ronald Courtley, and Benjamin Garrison respectfully request that this Honorable Court dismiss Plaintiff's Complaint with prejudice, along with an award of costs associated with the defense of this matter, and any other relief this Court deems appropriate.

COUNT VI

Intentional Infliction of Emotional Distress

48. Defendants adopt by reference their responses to paragraphs 1 through 47.

49. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an

accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

50. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

51. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

52. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

WHEREFORE, Defendants Jonathan Henry, Mark Bessner, Ronald Courtley, and Benjamin Garrison respectfully request that this

Honorable Court dismiss Plaintiff's Complaint with prejudice, along with an award of costs associated with the defense of this matter, and any other relief this Court deems appropriate.

DAMAGES

53. Defendants adopt by reference their responses to paragraphs 1 through 52.

54. The allegation contains statements of law, and not fact, for which no answer is necessary. Further answering, the allegation (including subparts a through i) is denied in the form and manner alleged for the reason that it is not an accurate statement of fact and asserts an incorrect conclusion of law, and Plaintiff is left to his proofs.

CONCLUSION AND RELIEF REQUESTED

55. Defendants adopt by reference their responses to paragraphs 1 through 54.

WHEREFORE, Defendants Jonathan Henry, Mark Bessner, Ronald Courtley, and Benjamin Garrison respectfully request that this Honorable Court dismiss Plaintiff's Complaint with prejudice, along

with an award of costs associated with the defense of this matter, and any other relief this Court deems appropriate.

AFFIRMATIVE DEFENSES

PLEASE TAKE NOTICE that Defendants Jonathan Henry, Mark Bessner, Ronald Courtley, and Benjamin Garrison, by counsel, assert the following affirmative defenses:

1. Some or all of Plaintiff's losses and damages, if any, was caused by his own conduct or the conduct of third parties and not attributable to Defendants.
2. Some or all of Plaintiff's claims may be barred by res judicata/claim preclusion.
3. Some or all of Plaintiff's claims may be barred by collateral estoppel/issue preclusion.
4. Defendants are entitled to qualified immunity because they did not violate any clearly established constitutional rights.
6. Defendants are entitled to immunity under State law (MCL § 691.1407) and common law immunity.
8. Some or all of Plaintiff's claims may be barred by the applicable statute of limitations.
9. Plaintiff's claims may be barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).

10. Defendants reserve the right to claim some or all of Plaintiff's claims may be barred by the failure to mitigate damages, if discovery reveals appropriate evidence.

11. Plaintiff has failed to state a claim upon which relief may be granted.

12. Plaintiff may be equitably barred from recovery under the Wrongful-Conduct Rule.

13. Defendants reserve the right to raise further defenses or assert other matters revealed by continuing investigation and discovery, including all defenses available under the court rules, upon the completion of discovery and as the Court permits.

DEFENDANTS' RELIANCE UPON JURY DEMAND

Defendants Jonathan Henry, Mark Bessner, Ronald Courtley, and Benjamin Garrison, by counsel, rely upon the jury demand filed in this matter, and will pay any fee upon proper notification by the Court.

Respectfully submitted,

Bill Schuette
Attorney General

/s/ Joseph T. Froehlich
Joseph T. Froehlich (P71887)
Assistant Attorney General
Attorneys for Defendants
Public Employment, Elections &
Tort Division

Dated: February 18, 2014

CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on February 18, 2014, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide copies to counsel of record and the Lenawee County Circuit court via US Mail.

//s/ Joseph T. Froehlich
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